

MINUTES
NATIVE AMERICAN GRAVES PROTECTION AND REPATRIATION ACT (NAGPRA)
REVIEW COMMITTEE
FIFTEENTH MEETING: JUNE 25-27, 1998
PORTLAND, OREGON

The fifteenth meeting of the Native American Graves Protection and Repatriation Review Committee was called to order by Ms. Tessie Naranjo at 8:30 a.m., Thursday, June 25, 1998, at the Colonel Lindbergh Room, Downtown Portland Embassy Suites, Portland, Oregon. The following Review Committee members, National Park Service (NPS) staff, and others were in attendance:

Members of the Review Committee:

Ms. Tessie Naranjo, Chair
Mr. James Bradley
Mr. Lawrence Hart
Ms. Vera Metcalf
Mr. Armand Minthorn
Mr. John O'Shea
Mr. Martin E. Sullivan

National Park Service staff present:

Mr. Francis P. McManamon, Departmental Consulting Archaeologist, Washington, DC
Mr. C. Timothy McKeown, NAGPRA Program Leader, Washington, DC
Ms. Jennifer Schansberg, NAGPRA Consultant, Washington, DC
Ms. Carla Mattix, Solicitor's Office, Department of the Interior, Washington, DC

The following were in attendance during some or all of the proceedings:

Mr. Roger Anyon, Smithsonian Institution, Tucson, Arizona
Mr. Greig W. Arnold, Makan Cultural & Research Center, Neah Bay, Washington
Mr. Tim Batin, Confederated Tribes of the Yakama Indian Nation, Toppenish, Washington
Mr. Richard M. Begay, Navajo Nation, Window Rock, Arizona
Mr. Steve Begay, Navajo Nation, Window Rock, Arizona
Ms. Patty Blankenship, Washington State Historical Society, Tacoma, Washington
Ms. Janine Bowe chop, Makan Cultural & Resource Center, Neah Bay, Washington
Ms. Pam Brown, University of British Columbia Museum of Anthropology, Vancouver, British Columbia
Ms. Linda Burbach, Bonneville Power Administration, Portland, Oregon
Mr. Elgin Crows Breast, Three Affiliated Tribes of North Dakota, New Town, North Dakota
Mr. Richard Dalton, Sr., DC Museum, Hoorcati, Alaska
Mr. Don Day, Confederated Tribes of the Grand Ronde Community, Stayton, Oregon
Mr. Mark DeLeon, Bureau of Reclamation, Yakima, Washington
Mr. Steve Denton, Bellevue, Washington
Mr. Donald Duncan, Mendocino County Intertribal Repatriation Project, Talmage, California
Ms. Kathleen Duncan, Jamestown S'Klallam Tribe, Sequim, Washington
Ms. Marguerite Edwards, Puyallup Tribe, Tacoma, Washington
Ms. Pamela Endzweig, University of Oregon Museum of Natural History/Oregon State Museum of Natural History, Eugene, Oregon

Ms. Adeline Fredin, Confederated Tribes of the Colville Reservation, Nespelem, Washington
 Ms. Reba Fuller, Central Sierra Me-Wuk/Tuolumne Band of Me-Wuk, Tuolumne, California
 Ms. Myra Giesen, Bureau of Reclamation Program Analysis Office, Lawrence, Kansas
 Ms. Martha Graham, Department of Anthropology, American Museum of Natural History, New York, New York
 Mr. Dave Grignon, Menominee Nation & Wisconsin Intertribal Repatriation Committee, Keshena, Wisconsin
 Ms. Pam Hann, Native American Program, Oregon Legal Services, Portland, Oregon
 Ms. Maiya Hall, Native American Legal Aid of Oregon Legal Services, Lake Oswego, Oregon
 Ms. Peachie Hamm, Confederated Tribes of the Grand Ronde Community, Grand Ronde, Oregon
 Ms. Francine Havercroft, Maryhill Museum, Goldendale, Washington
 Ms. Carol Ann Hawks, Puyallup Tribe, Tacoma, Washington
 Ms. Carla High Eagle, Nez Perce Tribe, Lapwai, Idaho
 Mr. Frederick Ike, Sr., Confederated Tribes of the Yakama Nation, Toppenish, Washington
 Ms. Barbara Isaac, Peabody Museum of Archaeology and Ethnology, Cambridge, Massachusetts
 Mr. Donald Ivy, Coquille Tribe, North Bend, Oregon
 Mr. Charles James, Bureau of Indian Affairs, Portland Area Office, Gresham, Oregon
 Ms. Geraldine Jim, Confederated Tribes of the Warm Springs Reservation, Warm Springs, Oregon
 Mr. Roger Kelly, National Park Service, San Francisco, California
 Mr. Keith Kintigh, Society for American Archaeology, Department of Anthropology, Arizona State University, Tempe, Arizona
 Ms. Lena Landry, Puyallup Tribe, Tacoma, Washington
 Mr. David M. Liberty, World Citizen, Pendleton, Oregon
 Ms. Cheryl L. Lohman, Confederated Tribes of the Grand Ronde Community, Vancouver, Washington
 Mr. Louis Malatare, Confederated Tribes of the Yakama Nation, Toppenish, Washington
 Ms. Marilyn Malatare, Confederated Tribes of the Yakama Nation, Toppenish, Washington
 Ms. Lynette Miller, Washington State Historical Society, Tacoma, Washington
 Ms. Paula Molloy, National Museum of Natural History, Washington, DC
 Mr. James D. Nason, Thomas Burke Museum, University of Washington, Seattle, Washington
 Mr. David Orr, National Park Service, Valley Forge, Pennsylvania
 Ms. Laura Phillips, Thomas Burke Museum, Seattle, Washington
 Ms. Cathy Poetschat, Oregon Archaeological Society, Beaverton, Oregon
 Mr. Louis Putty, Confederated Tribes of the Warm Springs Reservation, Warm Springs, Oregon
 Ms. Karen Quigley, Oregon Legal Commission on Indian Services, Salem, Oregon
 Mr. Jed Riffe, Independent Producers Services, Berkeley, California
 Ms. Alyce Sadongei, National Museum of the American Indian, Smithsonian Institute, Washington, DC
 Mr. Alan Schneider, Portland, Oregon
 Ms. Dale Ann Sherman, Yurok Nation, Eureka, California
 Mr. Kenny Paul Sonoquie, Chumash/Yuma, Quincy, California
 Mr. Vincas Steponaitis, Society for American Archaeology, University of North Carolina, Chapel Hill, North Carolina
 Ms. Dorothea Theodoratus, Consultant Central Sierra Me-Wuk, Fair Oaks, California
 Ms. Ann Tweedie, Harvard University, Neah Bay, Washington
 Mr. Nicholas Valentine, US Fish & Wildlife Service, Sherwood, Oregon
 Ms. Anne Marie Victor-Howe, Peabody Museum, Harvard University, Cambridge, Massachusetts
 Mr. Tom Visosky, Air Force Center for Environmental Excellence, Western Regional Office, San Francisco, California
 Mr. Grant Wahleneka, Confederated Tribes of the Warm Springs Reservation, Warm Springs, Oregon

Ms. Emily Wahlenka, Confederated Tribes of the Warm Springs Reservation, Warm Springs, Oregon
Ms. Lynda L. Walker, US Army Corps of Engineers, North Pacific Region, Portland, Oregon
Mr. Nelson Wallulatum, Confederated Tribes of the Warm Springs Reservation, Oregon, Warm Springs, Oregon
Ms. Kristi Warner, Confederated Tribes of the Warm Springs Reservation, Warm Springs, Oregon
Mr. Wilson Wewa, Sr., Confederated Tribes of the Warm Springs Reservation, Warm Springs, Oregon
Mr. Art Wolf, The High Desert Museum, Bend, Oregon
Mr. Frank E. Wozniak, USDA Forest Service, Southwestern Region, Albuquerque, New Mexico
Ms. Judy Wright, Puyallup Tribe, Tacoma, Washington
Mr. Fred York, National Park Service, Seattle, Washington

Ms. Naranjo welcomed the Review Committee members and members of the audience. Mr. Minthorn gave the opening invocation. The Review Committee members introduced themselves.

Review of the Agenda

Mr. McManamon welcomed the Review Committee members and audience members and introduced the National Park Service staff present at the meeting. He explained that the meetings are open to the public with scheduled public comment periods. He expressed his appreciation to the Review Committee members for their work on implementing the Statute. He then gave a brief review of the agenda.

Implementation Update

Mr. McManamon explained that each Review Committee member had a summary in their binder of the progress made in NAGPRA implementation since the previous Review Committee meeting in Washington, DC in January, 1998.

Excavations/Discoveries on Federal/Tribal Lands

Mr. McManamon stated that since 1995 the NPS office has received six sets of notices from Federal agencies regarding disposition of inadvertent discoveries of Native American human remains and/or cultural items from Federal lands, with one set subsequently being rescinded. Mr. Bradley commented that this number reflects a need for the Review Committee members to pursue the issue of agency compliance. Mr. Minthorn stated that direction for Federal agency compliance with NAGPRA needs to come from the Washington DC offices down to the field offices in order to ensure agency-wide awareness of, and compliance with, NAGPRA.

Ms. Naranjo expressed concern about insufficient NPS staff and recommended increased funding. Mr. Minthorn agreed and added the increase in NPS staff was necessary in order for the Review Committee to reach its goal of ensuring NAGPRA compliance. Mr. Sullivan agreed. Ms. Naranjo asked about the number of NPS staff, and Mr. McManamon replied that there were currently five staff members. Mr. Bradley asked about the current backlog in processing Federal Register Notices. Mr. McManamon explained that the NPS currently has approximately 100 notices awaiting publication and each notice can take several days to complete and up to three days to publish. Mr. McKeown added that is roughly a one-year backlog of notices. Mr. Bradley asked if a letter from the Review Committee members would aid in getting additional support. Mr. McManamon stated that he

appreciated the sentiment and added that the Review Committee members could also try to assist other Federal agencies in receiving additional resources for use in implementation.

Litigation

Bonnichsen v. USACOE and Asatru Folk Assembly v. USACOE: Mr. McManamon stated that as discussed at the Washington, DC meeting in January, NPS and DOI staff became involved in providing technical assistance to the Department of the Army, the Department of Justice (DOJ), and the Corps of Engineers in attempting to resolve both administrative and regulatory requirements related to the situation involving the discovery of human remains at Kennewick, Washington in the Walla Walla District of the Corps of Engineers. The NPS and the DOI responded by letter to a series of questions asked of the Corps of Engineers by Judge Jelderks regarding this case, a copy of which was in the Review Committee member's binders.

Mr. McManamon explained that NAGPRA provides that Federal agencies can ask the Secretary of the Interior to make decisions regarding Native American human remains or cultural items found on Federal lands. As a result of this provision, an agreement was reached between the Department of the Army and the DOI whereby the DOI will be responsible for making two specific decisions regarding the situation, including developing a set of procedures and identifying any entities necessary to make the determinations, as follows: one, are these human remains of a Native American person under the definition of NAGPRA, and two, to which group should these human remains be disposed of (returned to). He added the agreement stipulates the Department of the Army will be responsible for paying for the activities, investigations, and expenses of the DOI related to fulfilling the terms of the agreement. Mr. McManamon added that the Review Committee currently has no direct role in this situation, and he was supplying the information in order to keep the Review Committee members up-to-date on this prominent case.

Mr. Hart expressed concern about the amount and types of testing being done on the human remains.

Mr. McManamon explained that as part of the consultation process, the DOI developed a draft document dated May 12, 1998, outlining a standard format for recording human skeletons developed by physical anthropologists and forensic scientists. He stated the document was intended as a starting point in the discussion process to help determine what types of analysis would be most useful for resolving this issue. He added that there is general agreement that a certain amount of basic evaluation needs to be conducted to determine if the human remains are from a single individual. In response to concerns expressed by tribal representatives regarding the document, the DOI is currently redrafting the document in an attempt to evaluate more precisely what examinations and tests ought to be done and why, as well as providing information helpful in determining cultural affiliation. He stated the introduction to the document is useful in that it helps define the overall strategy, which is to first determine if the human remains are Native American or not, and therefore if NAGPRA applies, and then attempt to determine cultural affiliation. He explained that general physical examinations, measurements and analysis of this data would be used initially to help answer these questions, and then additional tests would be considered if necessary.

Mr. Bradley commented that this situation might result in a good set of directions for recording information on inadvertent discoveries. Mr. McManamon stated that was one factor in the DOI decision to become involved in this case, as well as the hope that the Judge would look at DOI involvement as a more definitive regulatory and legal interpretation than if the Corps of Engineers or the DOJ were to continue on their own.

Mr. Hart expressed concern that religious leaders be present prior to any examination of the human remains. Mr. McManamon stated that although they have not reached that level of specificity in discussions with tribal

representatives, he hoped that issue would be discussed at an upcoming meeting with tribal representatives in July. He added that in discussions with the DOJ, Department of the Army and the Corps of Engineers, there has always been a willingness to accommodate observers and ceremonies.

Mr. McManamon concluded that in an attempt to resolve the case, the DOI, the DOJ, the Corps of Engineers, the tribes and the plaintiff groups are attempting to mediate the litigation issues.

Providence v. Babbitt: Mr. McKeown stated that Providence v. Babbitt is a case brought by the City of Providence, Rhode Island against a Native Hawaiian organization, Hui Malama I Na Kapuna O Hawai'i Nei, the Office of Hawaiian Affairs, and the DOI. This particular case is one in which the Review Committee is in the process of issuing a finding regarding a particular object under dispute. The Department of the Interior was dismissed de facto, and the Hawaiian organizations and the City of Providence were currently involved in settlement discussions.

Museum/Federal Agency Collections

Notices: The NPS has received summaries from 1,031 institutions, both museums and Federal agencies, and is currently in the process of entering the information into a database to allow for easy manipulation of the information.

Inventories: The NPS has received inventories from 733 institutions.

Federal Register Notices: Since 1992, when the first Notice of Inventory Completion was published, the NPS has published 210 Notices of Inventory Completion, covering 10,390 human remains and 264,652 associated funerary objects. These notices indicate that the museum or agency has made a decision regarding affiliation and is ready to repatriate upon request. Since 1992, the NPS has published 82 Notices of Intent to Repatriate, covering 37,879 unassociated funerary objects, 727 sacred objects, 320 objects of cultural patrimony, and 265 objects that fit both the sacred object and object of cultural patrimony categories.

Grants: Since 1994, 112 grants totaling \$6.4 million have been awarded to Indian tribes and Native Hawaiian organizations, and 82 grants totaling \$4.2 million have been awarded to museums.

Civil Penalties: The NPS has received six allegations, by private individuals or tribes, regarding failure of a museum to comply with the NAGPRA statute. Upon review, four cases did not appear to constitute failure to comply, one case is currently under review, and one case appears to warrant further investigation, for which the NPS is currently soliciting information.

Regulations: A draft of the proposed regulations on future applicability of the statute is currently being reviewed by the DOI. Final regulations dealing with civil penalties have gone out for public comment and are currently being developed as a final rule. Mr. McManamon explained that the civil penalties were passed as an interim regulation and were in force immediately, and he added that penalties for museums found to be out of compliance are financial and relate to the size of a museum's budget.

Technical Assistance

Training: Mr. McKeown explained that the University of Nevada at Reno sponsors a NAGPRA training course taught by Judge Sherry Hutt and Mr. McKeown, which is tentatively scheduled to be held five times in the next fiscal year. Ms. Naranjo added that the Nevada workshop trainings were a good way to consult with tribal people and communities. Mr. O'Shea suggested an abbreviated grant application specifically to enable people to attend the workshops. Mr. McKeown stated tuition waivers have been received through the Cultural Resources Training Initiative within the NPS to ensure that tribes and museums that receive grants through the NAGPRA program have the opportunity to send a representative to these workshops. Mr. Minthorn expressed concern about lack of adequate tribal consultation by museums and universities resulting in incorrect determinations in inventories regarding sacred objects, objects of cultural patrimony, and unassociated and associated funerary objects, which reflects a need for training in this area.

World Wide Web: Ms. Schansberg stated that she has taken over World Wide Web responsibilities for the NAGPRA program. She explained that two sites are available. One is the NADB/NAGPRA site, which is updated weekly and has listings of all published notices, Review Committee meeting information and summaries, the statute, and regulations. The other site is through the National Park Service CR Web and has specific information relating to the NPS NAGPRA office, the Review Committee, and grant information and applications. She added that the NPS is in the process of developing a searchable consultation database available through a Web interface, which will hopefully be operational sometime in the summer of 1998.

Trafficking

Mr. McKeown stated that there had been developments in three cases since the Washington, DC meeting. Mr. William Stevens pled guilty in New York of trafficking in Native American human remains culturally affiliated with the Peoria in one case and the Seminole Tribes in another case, with sentencing to take place in June 1998. Mr. Richard Corrow's petition for a writ of certiorari was denied by the Supreme Court. Mr. Rodney Tidwell was found guilty in December 1997 of trafficking Hopi masks and sentenced on March 16, 1998 to 33 months imprisonment and a \$12,000 fine.

Mr. Minthorn expressed concern about the types of objects being trafficked and inquired about possible Review Committee recommendations regarding trafficking. Mr. Sullivan added a concern that courts have been too lenient regarding trafficking violations, and stated that the courts need to be made aware of the gravity of these offenses. Mr. Sullivan added that tribal courts may be becoming increasingly involved in handling these cases. Mr. Bradley stated that he shared the concerns of Mr. Minthorn and Mr. Sullivan and asked what the Review Committee members could do. Mr. McManamon stated that publication of the successful cases where traffickers have been apprehended and prosecuted, as well as individual Review Committee members helping to make people aware of the trafficking prohibitions and successful prosecutions, would be helpful.

Proposed Amendments

S. 110/H.R. 749: Mr. McManamon stated that at the time of the Washington, DC meeting, the DOI was developing a position regarding the two sets of proposed amendments. He explained that position was not finalized due to lack of activity on the part of Congress regarding the amendments and a lack of resources within the DOI. He stated that the DOI would probably not work to develop a final position on the amendments until Congress began to take some action. Mr. Minthorn recommended that the DOI continue to form a position on S. 110 and H.R. 749.

H.R. 2893: Mr. McManamon explained that a hearing was held on June 10th, 1998 on H.R. 2893, introduced by Representative Hastings from the State of Washington. He stated that among the people giving testimony were representatives from the Congress of American Indians, Mr. Minthorn representing the Confederated Tribes of the Umatilla Reservation, representatives of the Society for American Archaeology, Mr. Phillip Walker, a former Review Committee member, representing the American Association of Physical Anthropologists, Dr. James Chatters, who was involved in the original discovery of the Kennewick human remains, and Ms. Katherine Stevenson representing the DOI. He summarized the DOI's position that while the DOI does not support the current version of the amendment, the DOI recognizes that Congressman Hastings is trying to address important issues. The DOI feels that these issues can best be addressed through regulations and guidance, and proposes development of additional guidance, in particular, specific activities agencies need to undertake in cases of inadvertent discoveries or planned excavations.

Discussion of Culturally Unidentifiable Human Remains Issues from the Washington, DC Meeting

Ms. Naranjo asked for an update regarding requests brought before the Review Committee at the Washington, DC meeting from the California State Parks, Fort Clatsop, the State of Iowa and the State of Minnesota.

Mr. McManamon replied that regarding the California State Parks, a letter has been sent asking that additional consultation occur related to the human remains; regarding Fort Clatsop, the NPS is working with the Bureau of Acknowledgment and Research, Bureau of Indian Affairs (BIA), on identifying additional parties that should be consulted to resolve the issue; and regarding the States of Iowa and Minnesota, the NPS is currently evaluating the inventory information that was received from both states.

Review of Minutes of Washington, DC Meeting

The Review Committee members agreed unanimously to approve the minutes of the Washington, DC meeting on January 29, 30, and 31, 1998, with minor typographical changes.

Discussion on Federal Agency Compliance

Mr. Sullivan explained that the issue of Federal agency compliance has been a past concern of the Review Committee members and was mentioned in the Report to Congress by the members of the previous Review Committee. Concern about lack of agency compliance was so great that within the Report to Congress, the Review Committee recommended "that the Secretary of the Interior take appropriate steps to ensure that its agencies, particularly the Bureau of Land Management, immediately come into full compliance with NAGPRA. It also recommends to Congress that hearings should be held to request a full explanation from all the agencies that did not meet the November 16th, 1995 deadline for submitting inventories and gain assurance that these agencies will comply with NAGPRA in the future."

At the Washington, DC meeting a number of Federal agencies gave presentations to the Review Committee outlining their compliance with the statute. At that time, Mr. Bradley expressed a number of comments and

concerns, which were shared by the other Review Committee members, regarding the issue of Federal agency compliance, as follows: Mr. Bradley expressed an appreciation for the number of Federal agencies reporting to the Review Committee, but stated what was not clear was the difference between the perceived level of compliance at the top of agencies and the reality of compliance at the field levels. He stated the major agencies the Review Committee members should focus on are the DOI, the NPS and the BLM; DOD, Army, Army Corps of Engineers, Navy and Marines; the USDA, the NFS. He stated four major issues seemed to occur in the discussions: one, NAGPRA compliance must be an agency priority; two, agencies need to understand that compliance goes beyond the documentary requirements of NAGPRA and includes long-term tribal consultation on a government-to-government basis and following the requirements of the inadvertent discoveries section of NAGPRA; three, agencies have a lot of opportunity for interagency cooperation and assistance, including databases, training workshops and guidance; and four, agencies should be able to cooperate in funding strategies. Mr. O'Shea added that accountability goes along with consultation and needs to be considered. The Review Committee members discussed different strategies at the Washington, DC meeting to deal with the issue, including continuing to call noncompliance to the attention of the Secretary of the Interior and continuing to look to the Congressional Oversight Committee as a forum to address issues of noncompliance.

Mr. O'Shea stated that another issue regarding Federal agency compliance is a jurisdictional issue of one governmental agency trying to enforce compliance on other administratively equal agencies. He added that the Review Committee members might be able to help the DOI in terms of monitoring compliance with NAGPRA. Mr. Sullivan agreed and added the next step in ensuring Federal agency compliance might be to involve Congressional Oversight Committees.

Mr. Bradley stated that the General Services Administration (GSA) reported at the Washington, DC meeting that they had no NAGPRA collections, and he asked under which entities would collections by the Works Progress Administration (WPA) fall. Mr. McManamon stated that responsibility for WPA collections would depend on the contract between the Federal government and the state or local historical society or university for each particular project.

Review Committee members discussed methods to improve Federal agency compliance, including encouraging additional funding for agencies, noting Federal agency noncompliance in the Review Committee's Report to Congress, creating an annual report on the progress of Federal agency compliance, and individually bringing the issue to the attention of Congressional representatives in order to promote a Congressional Oversight Hearing on the subject. The Review Committee members asked the NPS staff to create a report with a cover letter from the Review Committee detailing the presentations made by Federal agencies at the Washington, DC meeting and outlining the status of agency compliance, which would be sent to the Secretary of the Interior.

Discussion on Disposition of Culturally Unidentifiable Human Remains

Review of the Review Committee's Obligations and Constraints: Ms. Carla Mattix explained that the Review Committee is charged both in the statute and in their Charter with compiling an inventory of culturally unidentifiable human remains that are in the possession or control of each Federal agency and museum and recommending specific actions for developing a process for disposition of such human remains.

Request from Sonoma State University: Mr. McKeown explained that Ms. Seana Gause from the Anthropological Studies Center at Sonoma State University asked for a recommendation regarding the disposition of 145 individuals and 224 associated funerary objects that were excavated from ten sites in Sonoma County and Marin

County, California. The University of Sonoma State contends that the human remains are culturally affiliated with the Federated Coast Me-Wuk, a non-Federally recognized Indian group in that area. Information was presented to the Review Committee regarding the cultural history of the Federated Coast Me-Wuk, which identifies the population back to 2500 B.P. Mr. McKeown explained that four of the sites have date information, which are all within the historical time period going back to 2500 B.P. He added that the Federated Coast Me-Wuk have filed a letter of intent with the BIA Acknowledgment and Research Branch and are also in the process of seeking reinstatement as a Federally recognized tribe through Congress. The representatives of Sonoma State University feel that disposition of these human remains and associated funerary objects should be to the Federated Coast Me-Wuk, and are seeking a recommendation from the Review Committee.

Mr. O'Shea expressed concern for the idea that for some sites the only basis for cultural affiliation was geographical location and for the claim that only Federated Coast Me-Wuk have lived in the area, going back into the Archaic period, and he asked if there was traditional information to support this claim. Ms. Fuller explained that traditionally Me-Wuk people are taught that they have been in the area since time immemorial. Mr. O'Shea also asked about information the Review Committee members received containing a discussion of the linguistic sequence of the area, which suggested in-migration and displacement of certain people. Ms. Fuller replied that changes in language could be explained by natural evolution.

Mr. Bradley asked for a brief historical and archaeological summary of the area. Mr. Kelly gave a brief description of the area and stated that technological patterns, settlement, subsistence, and economic ties have demonstrated records of at least two or three millennia in length supporting cultural affiliation for that length of time. Mr. Minthorn stated that he agreed with Ms. Geri Emberson, an ethnographic consultant, who wrote a letter to the Review Committee stating that these human remains are associated with the Federated Coast Me-Wuk, which is supported through extensive research conducted for the purpose of Federal recognition of the group. Mr. Bradley and Mr. O'Shea both commented that insufficient evidence was presented to indicate cultural affiliation of all of the human remains and associated funerary objects in question with the Federated Coast Me-Wuk people. Mr. O'Shea added that in some of the later sites, a strong case could be made based on the ethnographic and traditional accounts, and he also suggested one solution would be to allow the group to acquire Federally recognized status and then petition in their own right through normal NAGPRA procedures.

Mr. Roger Kelly, Park Service Archeologist, San Francisco office, described a cooperative agreement between Reyes National Seashore, the Federated Coast Me-Wuk and Ms. Theodoratus for a cultural affiliation study relative to the Seashore, to gather documentation about the Federated Coast Me-Wuk community in its current form and to obtain genealogical and other historical information supporting affiliation of the members of the Federated Coast Me-Wuk with the land in question. Ms. Fuller, Central Sierra Me-Wuk, stated she represents five groups in a four-county area that have worked with the Federated Coast Me-Wuk, and they acknowledge the cultural affiliation of the Federated Coast Me-Wuk with this specific group of collections. Mr. Kelly added that since European contact in the area in 1579-1595, there has been known occupation of this area solely by the Federated Coast Me-Wuk.

Ms. Naranjo observed that no representatives of either the Federated Coast Me-Wuk or Sonoma State University were present, and added that the Review Committee members could choose to make a decision at the next meeting and ask the representatives to attend. Mr. O'Shea added that following past Review Committee recommendations, the Review Committee members could request letters from Federally recognized tribes in the area endorsing this disposition. Ms. Theodoratus stated that area Federally recognized tribes and Federally recognized Me-Wuk tribes would include the ten tribe consortium of the Mendocino Pomo, the Marin County Coast Me-Wuk, the Lake Me-Wuk on Clear Lake, and several Sierran Me-Wuk tribes.

Mr. Minthorn expressed concern about separating the sites due to the possibility of separating artifacts and human remains, and he added that did occur in his tribe, which caused the need for additional ceremonies in order to return associated funerary objects to the human remains. Mr. Bradley stated that the way the law was defined, the human remains and associated funerary objects have to be considered separately in any event, because if the human remains were returned to a non-Federally recognized tribe, the human remains would be considered culturally unidentifiable. Mr. O'Shea asked if the law would prohibit museums from voluntarily repatriating associated funerary objects with culturally unidentifiable human remains. Mr. McManamon stated that the law does not specifically preclude voluntarily returning the items, but added that the NPS would need to look into the matter in greater detail.

Ms. Naranjo requested that the NPS send a letter to representatives of Sonoma State University on behalf of the Review Committee. Mr. McManamon summarized the contents of the letter, as follows: A statement that some of the information about the human remains was insufficient, and a request for additional information, specifically regarding the older sites; a request for additional descriptive information specific to the sites and to the burials, including information regarding artifacts; a request for information about chronology and potential cultural affiliation with the Federated Coast Me-Wuk from any available scientific information, as well as any available traditional stories and history; a request for written agreement from the existing Federally recognized tribes in the immediate areas surrounding the site locations; and finally, a statement that the Review Committee members plan to address this issue at its next meeting and would appreciate the presence of tribal and university representatives.

Discussion by Review Committee Members: Mr. Bradley stated that any recommendations that the Review Committee members make regarding culturally unidentifiable human remains need to be doable, enforceable, and equitable. Mr. Bradley summarized four categories of culturally unidentifiable human remains, and added that by placing culturally unidentifiable human remains in different categories, there may be different classes of solutions for dealing with the human remains. The categories of culturally unidentifiable human remains include those for which there is insufficient provenience information, those for which a non-Federally recognized tribe is culturally affiliated with the human remains, those from a clearly identifiable archaeological population for which there is no present-day tribe, and those from an archaeological population with insufficient evidence to establish cultural affiliation with a present-day Federally recognized tribe due to time depth or other factors.

Ms. Naranjo asked whether unclaimed human remains would fit under the third category. Mr. Bradley responded that unclaimed human remains have a separate definition under the inadvertent discoveries section of the statute and should be considered separately from the list culturally unidentifiable human remains categories. Mr. Sullivan added that some human remains are considered unclaimed because the tribe with whom they are culturally affiliated does not seek to return or rebury them; that is a question of disposition rather than identification and would not fall under the responsibility of the Review Committee.

Mr. O'Shea pointed out that in three of the four categories of culturally unidentifiable human remains, the status of unidentified may be transitory. Mr. Minthorn stated that he has been told many times by Indian people that if human remains are Native American, they are sacred and need to be treated accordingly, and he still agrees with the principle stated in the past by the Review Committee, "Ultimately, decisions about what happens to human remains of Native American individuals from anywhere in the United States and associated funerary objects should rest in the hands of Native Americans."

Mr. Hart asked about the status of the Tallbull Summit. Mr. Sullivan stated that the Tallbull Summit will occur due to a grant through the Repatriation Grant Program at the NPS, and through the efforts of the School of Law at Arizona State University and the Heard Museum. Mr. Sullivan explained that whatever draft statements or

recommendations were developed by the Review Committee members at the Portland, Oregon meeting, as well as past drafts, would be considered at the Tallbull Summit. The goal of the Tallbull Summit is to develop a report to present to the Review Committee and the NAGPRA Program staff identifying where there is consensus about definitions, goals and problem resolutions, and also to define areas of and reasons for nonconsensus.

The Review Committee members and the NPS staff reviewed the June 12, 1998 memo from the NPS to the Review Committee regarding discussion of culturally unidentifiable human remains (See Attachment 1). The following comments were made regarding the memo. Regarding question number three, "Was the separation of associated funerary objects from culturally unidentifiable human remains in section 8 a drafting error or a deliberate compromise," Mr. McKeown added that the fact the text appears more or less unchanged through the national dialogue and all versions of the bill suggests it was drafted deliberately; however, since some parties agreed, some did not comment, and some disagreed suggests that it was not a compromise. Ms. Mattix agreed with Mr. Bradley's statement that associated funerary objects were not included by design and a statutory amendment would be necessary to change that. Mr. Sullivan stated that as a member of the Panel for the National Dialogue and after speaking with Mr. Walter Echo Hawk, also a member of the Panel, he did not think there was a deliberate exclusion, but for whatever reason the issue was not considered. Mr. Minthorn recommended that the Review Committee members recommend a statutory change regarding this issue. Mr. Sullivan added that was one of the recommendations in the Review Committee's Report to Congress.

Ms. Naranjo expressed concern about the offensive nature of the term "property." Mr. Bradley explained that he was seeking clarification of whether funerary objects are considered part of the burial or property, since these two classifications are treated differently under the law. Mr. Sullivan added that some state laws consider funerary objects as part of burials, which is a compelling argument for Congress to amend the statute and include funerary objects with unidentifiable human remains.

Regarding the response to question four, Mr. Minthorn pointed out the offensive nature of the excerpt from House Report 101-877, "There is a general disagreement on the proper disposition of such unidentifiable human remains. Some believe that they should be left solely to science while others contend that, since they are not identifiable, they would be of little use to science and should be buried and laid to rest." Regarding question and response five, Mr. O'Shea asked about the Review Committee's ability to recommend universal repatriation of all human remains in non-Federal museums, specifically concerning Fifth Amendment takings issues. Ms. Mattix stated that right of possession and accessioning issues would have to be considered. Mr. Sullivan pointed out that the transfer of custody of human remains might be considered differently from funerary objects and would not fall under the takings provision.

Mr. Sullivan gave a brief review of discussions by the previous Review Committee members regarding the issue of culturally unidentifiable human remains. Two sets of draft recommendations were developed and published in the Federal Register, in June 1995 and in August 1996. Each set received a number of comments, both for and against the main concepts expressed in each. At the Myrtle Beach, South Carolina meeting, Review Committee members expressed frustration and dissatisfaction with the process of developing regulations and subsequently developed the idea for the Tallbull Summit. Mr. Sullivan concluded that the previous Review Committee members maintained consensus throughout the process on certain concepts, including: one, ultimately, because these are the human remains of Native people, the resolution ought to be in the hands of Native people; two, a decision needs to be made about whether the associated funerary objects are covered within the realm of recommendations; and three, that those groups that for genuine historical reasons have affiliation but are not Federally recognized need to be brought into the process.

Mr. Bradley reminded the other Review Committee members about their actions at the Washington, DC meeting in January 1998 regarding the requests from the States of Iowa and Minnesota to continue the repatriation of culturally unidentified human remains under the authority of their own state statutes. At that time, the Review Committee members endorsed and recommended approval of the requests with three provisions; appropriate documentation be provided by all Federally recognized tribes within those jurisdictions concurring with the plans for repatriation, information recorded on culturally unidentifiable human remains be considered public information, and requests need to comply with all technical aspects of NAGPRA.

Mr. Bradley presented a draft set of principles for discussion, as follows: one, the intent of the statute is clear, that the title of the Act, the Native American Graves Protection and Repatriation Act, makes fairly clear what the intent of the statute is, which is the appropriate repatriation or disposition of Native American human remains and cultural objects; two, cultural affiliation may not be the sole basis by which decisions of repatriation or disposition are made; three, there are at least four categories of culturally unidentifiable human remains, which suggest probably more than one way in which decisions on repatriation or disposition can be made; four, through the Review Committee members' actions at the Washington, DC meeting regarding the requests of the States of Iowa and Minnesota, one possible model for the process of disposition of culturally unidentifiable human remains was developed; five, the Review Committee members need to continue to find appropriate ways for non-Federally recognized tribes to be involved in the process of disposition of culturally unidentifiable human remains; six, recommendations on the repatriation or disposition of associated funerary objects is at present not within the Review Committee's charge; and seven, ultimately, the decisions on repatriation and disposition of human remains and cultural objects should rest primarily in the hands of Native people.

The Review Committee members then discussed the draft set of principles submitted by Mr. Bradley and from that developed a draft set of principles of agreement and other issues of discussion to be presented at the Tallbull Summit as a basis for dialogue (see Attachment 2).

The Review Committee members individually added numerous thoughts to the discussion. Mr. Hart and Mr. Minthorn stated that the appropriate repatriation of "all" Native American human remains needs to be accomplished. Mr. O'Shea stated that he did not agree with the statement that "Ultimately the decisions on repatriation and disposition of human remains and cultural objects should rest in the hands of Native people." Mr. Minthorn stressed the importance of good faith efforts on the part of museums, institutions, and Federal agencies to consult with tribes. Mr. O'Shea pointed out that a determination of culturally unidentifiable is not a permanent determination, that tribes may come forward at a later date with additional information to help determine cultural affiliation. Mr. Hart stated that the word "repatriation" needs to be used instead of the term "disposition." Mr. Bradley replied that the word "disposition" most closely follows the wording of the law. Ms. Naranjo agreed with Mr. Hart's concern, but suggested a definition for the word "disposition" might clarify the issue.

Ms. Naranjo stated she wanted further discussion on inclusion of the statement that "Ultimately the decisions on repatriation and disposition of human remains and cultural objects should rest in the hands of Native people." Mr. Hart and Mr. Minthorn agreed with Ms. Naranjo, while Mr. O'Shea and Mr. Bradley were not comfortable with the wording of that statement. The Review Committee members discussed the issue and decided that while they would not reach an agreement at the Portland, Oregon meeting, they agreed that the principle "What happens to the remains of Native American individuals from anywhere in the United States should rest in the hands of Native Americans" would remain an ongoing discussion.

Mr. Minthorn stressed that culturally unidentifiable remains are sacred, holy human remains, and are no less deserving of respect and dignity. Mr. McManamon cautioned against using the term “sacred,” since it has a very special meaning within the statute and the regulations. Mr. Hart pointed out that historically, some tribal groups were deliberately exterminated and such human remains may be part of the unidentifiable groups.

Using information from the NPS database inventory report dated January 28th, 1998, which contained no entries from the Pacific Northwest or the Mid-Atlantic states, Mr. McKeown gave approximate percentages of culturally unidentifiable human remains for each of the four categories, as follows: human remains culturally affiliated with a non-Federally recognized Indian group (all from California), 8.54 percent; human remains from an earlier group with no known culturally affiliated Indian tribe, 13.6 percent; ancient human remains, 16.36 percent; and human remains with no provenience (includes “unknown” earlier group and determination based only on aboriginal territory), 61.48 percent. He added that the database contained information from 25 institutions and the sample was based on 3,007 individual human remains.

Implementation of the Statute in the Pacific Northwest

Dr. James Nason, Thomas Burke Memorial Washington State Museum, stated the Thomas Burke Memorial Washington State Museum was established 113 years ago by the state legislature and is a museum of natural history and culture, whose primary mission and focus deals with the Pacific, the Pacific Rim and the Northwestern Region of North America. The Washington State Museum has received two NAGPRA grants to facilitate implementation of NAGPRA. The first grant provided funds for consultation visits from at least two tribal representatives from every tribe in Washington State and the adjoining areas to review collections and records relevant to the tribes. The first grant also provided funds for the Washington State Museum to generate and distribute to each tribe detailed inventory data for all ethnographic holdings that might be or were known to be affiliated or relevant to each tribe. This allowed the tribes to be better prepared for their consultation visits. The second grant provided resources to facilitate discussions with respect to archaeological site materials and identification of sacred objects, and the issues surrounding those objects, particularly collection management and conservation.

To date, four claims for repatriation from Washington State and two claims from other tribes in the United States have been finalized. Approximately 42,000 staff hours have been expended on activities directly related to NAGPRA. While grants have provided for some staff resources, the majority came from the activities of state-funded staff, who have carried out NAGPRA work in addition to their other duties, and graduate students and work study students from the University of Washington. There is an even more substantial need for additional resources for tribes for ongoing NAGPRA work, including staff and operations, reburial and related research costs. Funds are also needed for area tribes trying to establish tribal museum and cultural heritage centers. In addition to repatriation, these tribal institutions have broadly strengthened the whole museum community and its educational impact on the community, and have led to the facilitation of important research projects jointly between tribal and nontribal institutions.

Dr. Nason concluded that NAGPRA has helped the Washington State Museum formalize policies about the acquisition, maintenance, and exhibition of Native American materials; it has led to an ongoing reexamination of collections, with redocumentation adding significantly to knowledge about materials; it has increased public awareness about central issues involved in Native American heritage, which in turn has led to voluntary donations of material specifically for the purpose of repatriation; it has generated important new archival and field research

opportunities for tribal and nontribal scholars; and it has led to new discussions about the impact of culturally sensitive objects not currently covered under NAGPRA, including historic photographs and tape recordings.

Mr. Bradley expressed appreciation for the hard work and the progress made by the museum.

Ms. Marilyn Malatare, Confederated Tribes of the Yakama Nation, explained that after becoming the curator of the Yakama Nation Museum in 1993, she held a one-day seminar on NAGPRA, with Dr. James Nason and Ms. Kathleen Duncan among the presenters. After the seminar, the elders came away with knowledge and a good feeling about NAGPRA. The Yakama Nation has worked with the University of Oregon, the University of Washington, the United States Corps of Engineers, Walla Walla Corps of Engineers, the BLM, the Smithsonian, and the Warm Springs Tribe. Two Corps of Engineers facility visits, at the University of Oregon and the University of Washington, went very well, were well organized, and had excellent staff support and respect. She stated the Yakama Nation has yet to do any repatriations, but they are moving in a positive way regarding NAGPRA. She said the Yakama Nation participated in a grant with Dr. James Nason and the Burke Museum and the American Association of State and Local History, and are working jointly to form the American Indian Museum Association to work with Native cultural centers and Native American run museums across the nation dealing with NAGPRA.

Mr. Tim Batin, Confederated Tribes of the Yakama Nation, explained that he is studying to become an archaeologist and is working at the Yakama Nation Museum. He stated that he has learned a great deal and his greatest resource has been the elders, and expressed concern that their oral history is trivialized. He explained the progress the Yakama Nation Museum has made through the efforts of Ms. Malatare and others, and added that the younger generations were also encouraged to pursue fields such as archaeology in order to deal with this issue on a professional level. Mr. Batin expressed appreciation for the work of the Review Committee members, and their attempts to see both the cultural and professional sides regarding NAGPRA. He stated that the Yakama Nation also has had negative experience with the University of California Berkeley (as described by Ms. Fuller), and added that the Yakama Nation will write a letter in support of the Central Sierra Me-Wuk against UC Berkeley, which they will submit to the Review Committee.

Mr. Bradley thanked Ms. Malatare and Mr. Batin for their presentations and expressed appreciation for their efforts and results. Mr. Hart clarified that the statute does elevate oral history to the same status as written records.

Kathleen Duncan, Jamestown S’Klallam Tribe, explained that she works under a grant from the NPS and represents the Jamestown S’Klallam Tribe, the Elwha Klallam Tribe, and Port Gamble S’Klallam Tribe in repatriation issues. She stated that with each museum she has worked with, she has requested additional information and has sent information, including tribal territorial maps, and added that her tribe has some overlapping territory with a tribe that is considered extinct. The Quileute, a neighboring tribe, is linguistically related to the extinct tribe, and the parties have worked out an agreement to repatriate human remains from the extinct tribe to the territory that they came from.

When working with museums and institutions, Ms. Duncan requests that any sensitive information provided be kept confidential and be returned to the tribe upon completion of the NAGPRA process. She has implemented a database program to allow for efficient data exchange among the three tribes, as well as fulfilling speaking engagements, both tribal and public, to inform people about NAGPRA. To date, repatriations have occurred from three museums and six more are ongoing. Ms. Duncan reported only one area of concern, when museums send information to tribes and presume to know more about the object than tribal people. Otherwise, working with museums has been a very positive, respectful experience.

Ms. Metcalf stated she was encouraged after hearing about this group's successful work, sharing of resources, and positive experiences with museums.

Ms. Peachie Hamm, Confederated Tribes of the Grand Ronde Community, stated that she was chair of the Grand Ronde Tribe culture board, established in 1996. The aim of the culture board is to recognize, affirm, and collaborate the historical and contemporary cultural achievements of the Grand Ronde people; to preserve and perpetuate their culture with other groups and individuals with similar aims; and to collect, preserve, and interpret articles of cultural patrimony, as well as documents, language, oral history, songs and dances. The culture board has been active in repatriation efforts and have worked with several institutions. Their goal is to complete a museum, which will be a working museum with workshops featuring cultural projects and language.

Donald Ivy, Coquille Indian Tribe, stated that he admired and respected the Review Committee members for their dedication and commitment to their task. He commended their tolerance and patience with views that were clearly at times different from their personal views. The Coquille Indian Tribe is a tribe that was restored to Federal recognition in 1989 through a combination of western Oregon Indian groups. The Coquille Indian Tribe has received two NPS grants that allowed tribal representatives to travel on the West Coast to museums who, as a result of information provided to the tribe, may have had objects and items affiliated with the Coquille Indian Tribe. As a result of that repatriation project, a set of human remains will be repatriated from the Los Angeles County Museum of Natural History in 1998. Other human remains at the University of Oregon and the Oregon State University have been determined to be Coquille and will be returned.

Mr. Ivy stated that he will report back to his tribe that NAGPRA is a good tool and the Review Committee is a group of people interested in what tribes and institutions have to say regarding this issue. He will recommend that his tribe send a letter acknowledging the need for more resources for the Review Committee, the NPS, tribes, museums and Federal agencies. Mr. Ivy asked the Review Committee members to recommend that for whatever reason human remains remain in collections that they be cared for in a more respectful way than in boxes on shelves and in cubby holes. He stated he will recommend that his tribe send a letter to the Review Committee with advice to heed suggestions regarding the process of implementing NAGPRA, such as using a regional approach in order to help solve issues that are relevant only in certain geographical areas of the country.

Ms. Pamela Endzweig, University of Oregon Museum of Natural History/Oregon State Museum of Anthropology, explained that the museum was legislated in 1935 as the official repository for anthropological materials held by the State of Oregon, and holdings today include ethnographic and archaeological collections. The museum's NAGPRA compliance was initiated upon passage of the law in 1990 and was supported by a NPS grant. Summaries were mailed to approximately 200 tribal groups, with about two dozen responses received initially and a small amount continuing to arrive. Preliminary inventories for human remains and funerary objects were mailed in 1995 and resulted in museum visits by representatives from seven of the nine Federally recognized Oregon tribes and one Washington tribe, with more visits planned. The museum staff found these visits to be positive experiences, and appreciated the opportunity to share information, experiences, and concerns. The museum has completed one repatriation to date, and several more await processing of submitted notices by the NPS.

Ms. Endzweig stated that one of the main challenges the museum faces is the reconciliation of obligations to Federal land-holding agencies with obligations to the tribes. The Federal agencies determine the disposition of collections from their respective lands and conduct NAGPRA-related negotiations with the tribes. One of the initial efforts of the museum was to determine both the agency affiliation and the cultural affiliation of all holdings. While the museum's efforts have generally been successful, special care is required to maintain communications

with all parties involved and to avoid the impression to the tribes that the museum is shirking responsibility. Another area of challenge may occur with competing claims of area tribes who have overlapping cultural affiliation; however, the museum anticipates the resolution will be negotiated among the relevant tribes without involving the museum or the NPS. Ms. Endzweig commended the work of the Review Committee members, and expressed appreciation for the public forum which allows for public participation.

Dale Ann Sherman, Yurok Nation, thanked the Review Committee members for having the meeting on the West Coast and for their efforts regarding NAGPRA. She stated that on June 26th, 1998, she watched President Clinton give a speech to the Chinese government in which he admonished them to treat their people with civil rights, respect, dignity, freedom, and equality. She stated it was ironic that the first people of this continent have to come before the Review Committee and beg for their ancestors' remains to be returned with dignity. She asked the Review Committee members to interpret NAGPRA as something that can be a win-win situation for tribes and museums; all tribes are asking for is the chance to get back their ancestral remains and bury them with respect. She stated that museums look at NAGPRA from a scientific viewpoint but that has to be weighed against possible benefits, and she asked of what benefit is the study of the Kennewick man, regardless of his origin, he deserves to be buried with respect. NAGPRA is a law that was passed to empower both sides and has been called a compromise, but the Native Americans are the people who compromise. Native Americans only want to rebury their ancestors and be empowered with the sacred. She again urged the Review Committee members to look at NAGPRA as a way for all to win.

Recommendation for Future Funding

In response to the backlog of work necessary to the implementation of NAGPRA within the NPS Archaeology and Ethnography Program, the Review Committee members drafted a letter to the Secretary of the Interior requesting additional funding for the NPS staff to help in the implementation of NAGPRA. A copy of this letter was submitted to Mr. McManamon, which will be forwarded to the Secretary of the Interior.

Upcoming Meetings

After discussion, the Review Committee members tentatively set the next meeting for November or December, 1998 in Santa Fe, New Mexico. Ms. Naranjo noted that the Review Committee members appreciated the invitation from the State of Minnesota Indian Affairs Council and would consider that location for a later meeting.

Letter from Ms. Betty Washburn

Mr. McManamon summarized the situation with regard to the Satanta shield currently in the possession of the P.A. Hearst Museum. Ms. Washburn, who is the representative of the descendants of Satanta, initially made the argument that the shield was a sacred object and an object of cultural patrimony, and should be returned to the descendants of Satanta. At that time, the Review Committee members made a determination that based on the statute, the shield did not fit the definition of sacred object or object of cultural patrimony, and that the information provided by the P.A. Hearst Museum was a good indication of right of possession on the part of the museum. The Review Committee members stated they were sympathetic to the concerns of the Satanta descendants and to the tribes that supported their position, and wrote to the museum suggesting a possible long-term loan of the shield to

the Fort Sill Museum in Oklahoma. The current letter from Ms. Washburn in part is asking the Review Committee members to take whatever steps possible to support that action.

Mr. Minthorn stated that he believed the shield was a sacred item and an object of cultural patrimony, and explained that “sacred” can have different meanings for different tribes, which are very hard for nontribal people to understand. In the absence of additional information, the Review Committee members did not discuss further details of the situation. Mr. McManamon agreed that the NPS would work with the Review Committee Chair to develop a response to Ms. Washburn’s letter, stating that the issue does not fall within the purview of the statute, but the Review Committee members sympathize with the descendants of Satanta and inviting them to make a presentation to the Review Committee at the Santa Fe meeting. A letter would be sent to the P.A. Hearst Museum asking whether the museum has come to any decisions regarding a loan to the Fort Sill Museum.

Public Comment

Central Sierra Me-Wuk Cultural Committee

Ms. Reba Fuller, NAGPRA Project Director for the Central Sierra Me-Wuk Cultural and Historic Preservation Committee, explained the current situation regarding efforts to work with the University of California Berkeley (UCB) and the Phoebe Hearst Museum of Anthropology, through the NPS NAGPRA Grant program, to address cultural affiliation for the Sierran and Plains Me-Wuk collections. She stated that her committee requested two conditions before agreeing to participate in the grant, to which the museum agreed: one, the museum must recall all relevant collections on loan, and two, access to these collections must be restricted for consultation purposes. Subsequent to receiving the grant, UCB did not meet the conditions requested by the committee. The committee then requested a meeting with UCB administration officials, which took place on June 11, 1997. At the meeting the UCB administration’s position became clear on three points: one, failure to support the museum’s request to recall a loan collection for which the loan agreement had expired; two, support of a tenured professor’s possible illegal possession of said collections without a full academic hearing; and three, to interpret reasonable access as restricted access. She also explained that UCB stated they had no repatriation committee or policy regarding the use of Native American human remains for teaching. The Central Sierra Me-Wuk Cultural and Historic Preservation Committee has two concerns; one, the UCB has consistently and purposely evaded responsibility for implementing NAGPRA, and two, actions preventing representation of California Indians’ interests at a recent UCB Academic Senate hearing reflect a prejudice toward California Indians by UCB. Ms. Fuller concluded by saying that her committee has found NAGPRA, though flawed, to be one of the most significant pieces of legislation pertaining to Indian rights.

Dr. Dorothea Theodoratus, consultant for the Central Sierra Me-Wuk Cultural and Historic Preservation Committee, stated the allegations presented by Ms. Fuller on behalf of the Sierra Me-Wuk were true, and she supports their claims. She explained that she and a colleague, Dr. Michael Moratto, both experienced a negative change of attitude on the part of UCB when they went to UCB on the behalf of the Sierra Me-Wuk. She stated that UCB is a university that is founded on Californian Indian history and culture. UCB encourages demonstrations of local culture, but are unable to speak to tribes on a government-to-government basis. Both Ms. Fuller and Dr. Theodoratus expressed the hope that bringing this issue to the Review Committee members’ attention would aid in the future claims of other tribes at the University of California.

Mr. Bradley asked the NPS if the situation would be likely to result in a dispute and expressed hope that the situation is not as bad as presented, and if it is that people can learn and do better. Mr. McManamon replied the NPS will be reviewing the situation.

Wisconsin Intertribal Repatriation Committee

Dr. David Grignon, member of the Menominee Nation of Wisconsin, and chairman of the Wisconsin Intertribal Reinterment Committee, explained that the Wisconsin Intertribal Reinterment Committee is a coalition of Wisconsin's 11 tribes and bands. The committee's main objective is to repatriate all unidentified Native American human remains from the state of Wisconsin and to reinter them in a neutral burial place in their state. The committee is opposed to all types of scientific study conducted on Native American human remains. The committee is currently working on a grant from the NPS and will hire a coordinator to create a database of unidentified Native American human remains. The Menominee Nation Tribal Elders committee recently approved a plan for the repatriation of Menominee human remains and have designated a burial site on their reservation. He stated regarding the case of Kennewick man, the committee believes he should be given back to the Native people in the Northwest and placed back in the earth. Mr. Grignon hoped the NAGPRA Review Committee can create policies and procedures making the process easier for tribes and coalitions to repatriate unidentified human remains.

Mr. Elgin Crows Breast, Three Affiliated Tribes of North Dakota and member of the North Dakota Intertribal Reinterment Committee, which is comprised of four North Dakota Tribes, recommended that unidentifiable Native American human remains be returned to the tribes based upon their aboriginal homelands, his being Wyoming, South Dakota, Montana, and North Dakota. He expressed concern over Senator Hastings' bill to amend NAGPRA granting the scientific community precedent over Native Americans and an added concern that unidentified Native American human remains would not be returned. He stated that tribes need to have a voice in this issue. Under an Executive Order signed by President Clinton in 1995, tribes are to be consulted on a government-to-government basis. Mr. Crows Breast explained that he would like help from the Review Committee to rebury these human remains, and he added that to date he has participated in 4, 500 reburials.

Ms. Myra Giesen, NAGPRA Coordinator for the Bureau of Reclamation, asked about the makeup of the participants in the Tallbull Summit and strongly suggested that Federal agencies have representation at the Summit. In the alternative, Federal agencies should be allowed to comment on the results of the Summit. Ms. Naranjo stated that Ms. Giesen's suggestion would be forwarded to Ms. Rebecca Tsosie and Mr. Sullivan, who are coordinating the Summit.

Ms. Adeline Fredin, Colville Confederated Tribes, stated that Native American tribes have the opportunity to object to the idea that the Review Committee can set a standard by which tribes cannot claim their ancestry, i.e., a date 2,000 or 5,000 years ago, and she objected to the fact that human remains outside of the standard would be subject to scientific research. If the Review Committee members support such a standard, then they are not representing the interest of the tribes. She did not believe NAGPRA was drafted to set aside a percentage of repatriation materials for any reason. If the Review Committee members have a different criteria, other than repatriation of all human remains and associated funerary objects, then they need to make that known. Tribes also need the opportunity to describe their aboriginal territory based on ancestral information; even though many tribes were moved involuntarily from their aboriginal lands, they still have sacred ties. She expressed concern that provisions are made for institutional discussions of human remains, but no provisions are made for traditional discussion on an equal level and accorded the same weight.

Ms. Carla High Eagle, Nez Pierce Tribe and Nez Pierce Tribal Executive Committee, thanked the Review Committee for the opportunity to share her opinions regarding NAGPRA. NAGPRA was designed to provide equal protection for Native American graves and repatriation and was needed to address the growing embarrassment and offensiveness of US policy that allowed desecration of Native American graves. She stated the issues of culturally unidentifiable being interpreted to exclude funerary objects and the idea that Native American people will ultimately decide disposition of Native American human remains were not given the same interpretations by the Review Committee in its discussions at the meeting that Native American value has. She stressed the importance of the Review Committee members' responsibility and opportunity to provide review and recommendations to Congress on how the NAGPRA process should and could be improved.

Mr. Frederick Ike, Sr., Yakama Indian Nation, stated the people that made this law do not understand Native American beliefs, rituals, traditions and customs. He expressed concern over the offensiveness of the term "disposition," stating that it depersonalizes or dehumanizes human remains and implies disposing of an object or a piece of property no longer needed or wanted. The statutory term is "repatriation," to return or repatriate, which should be used instead of disposition.

Ms. Barbara Isaac, Peabody Museum at Harvard University, explained that the Peabody Museum has a large number of human remains in their care, and they will be working with a large number of tribes across the United States in terms of considering the cultural affiliation of these collections. She agreed with Mr. Bradley that the process for determining cultural affiliation needs to be doable, and suggested using a regional approach. She agreed with Mr. O'Shea that a determination of culturally unidentifiable for human remains, even if the geographic location is known, is in no way disrespectful or permanent. She asked that the process also provide for sufficient time to allow for participation of all people, as well as consider spiritual and emotional concerns. Ms. Isaac stated that while she did not have the exact percentages of the different categories of culturally unidentifiable human remains, a rough estimate of the figures from Massachusetts and New England as a whole showed almost opposite results from those detailed earlier by Mr. McKeown.

Ms. Cheryl Lohman, member of the Ronde Valley Indian Reservation, stated that under the definition of artifacts, human remains become "property" which is an offensive word. She is concerned that Native American ancestors lose their human rights which become property rights. She hoped the Review Committee members would consider reviewing this issue. She explained her tribe also has had negative experiences with the UCB, as described earlier by Ms. Fuller. Mr. Bradley explained that he raised the issue of property because NAGPRA is not property law, but equal protection law, and the purpose of NAGPRA is to guarantee that Native people have the same respect and due process in terms of their ancestors as non-Native people.

Mr. Louis Malatare, Yakama Indian Nation, commended the Review Committee members for the challenge they have accepted. He explained the importance to his society of practicing their laws and traditional ways. He cautioned not to place too much importance on continuity, because the elders teach that over time all things change. He explained a problem for his tribe that was created by NAGPRA; when human remains were exposed along the bank of the Columbia River, traditional law would have allowed for removal of the human remains to a safe location. However, the human remains were located on Federal land, and the law called for a notification period, even though all concerned tribes had already acknowledged and agreed that these human remains should be reburied. By the end of the year delay, during which time the human remains were unprotected, the area had eroded and the human remains were gone. He stated that in the future the Yakama Nation will have to follow their traditional laws and protect their ancestral human remains, and asked the Review Committee if there were faster solutions allowed in the law to handle future occurrences.

Ms. Marilyn Malatare, Yakama Indian Nation, stated that her nation is an oral traditional people and a living culture.

Dr. James Nason, Washington State Museum and the University of Washington, suggested that the Review Committee members might wish to reconsider the use of time depth in the fourth category of culturally unidentifiable human remains, since the law calls for a preponderance of the evidence to be used. He added that it is important for the Review Committee members to come to some agreement about guidelines with regard to the intent of the Congress in the passage of NAGPRA. Prior to the passage of NAGPRA in a special briefing by Mr. Dan Monroe, at that time the lead representative of the American Association of Museums and later a Review Committee member, made it abundantly clear to those present that the legislative intent was that all Native American human remains were to be subject to repatriation to Native American tribes, whether in collections or inadvertently discovered, with no exceptions. Regarding the issue of cultural affiliation with extinct tribes, Dr. Nason pointed out the possibility of members of tribes now extinct having been absorbed by neighboring tribes, as was the case of the Kwaliqwa people in the state of Washington during the late 1800s, and the possibility of the existing Federally recognized tribe making a request to repatriate human remains, associated funerary objects and other materials previously identified with the extinct group.

Vin Steponaitis Society for American Archeology, stated that he thought the discussion at the Portland meeting was informative in reminding everyone of NAGPRA's original intent, which was to walk the middle road between spiritual and scientific concerns. He expressed appreciation for the difficulty of that task and thanked the Review Committee, the NPS and all present for trying to find that middle road.

Regarding legislative intent on the issue of culturally unidentifiable human remains and associated funerary objects, Mr. Steponaitis stated that he was involved in the process of the development of NAGPRA and attended many briefings and meetings. While Mr. Monroe and Mr. Echo Hawk made many contributions and deserve respect for their role in this process (as described by Mr. Nason), Mr. Steponaitis recalled hearings with Congressional staffers who said that NAGPRA was only going to deal with very recent human remains and funerary objects, as well as hearing a range of other opinions on the issue. He stated the Review Committee members should continue to focus on the language of the law, the Congressional reports that accompanied the law, and to consider those as the source of understanding as far as the legislative intent.

Mr. Grant Wahlenka, member of the Confederated Tribes of Warm Springs, Oregon and Chairman of their Culture and Heritage Committee, expressed concern about the lack of inclusion of private property owners in the NAGPRA statute, putting human remains at risk. He stated he has been involved on four occasions repatriating skeletal remains, and has dealt successfully with county sheriffs, Oregon and Washington preservation officers, private landowners, and National Forest Service personnel. He explained that recent law enables tribes to appoint their own preservation officers, eliminating the need to consult with the state preservation officers. Mr. Wahlenka recommended adding "private land" to section 3 of the statute, which deals with ownership. Mr. Sullivan stated that the Review Committee's most recent Report to Congress specifically identifies the expansion of the NAGPRA statute to cover discoveries on private land as a priority.

Mr. Wilson Wewa, Sr., Confederated Tribes of the Warm Springs Reservation, stated he has heard comments from many Northwest tribes expressing concern about the presence of Native American ancestors in collections, the continued collection of artifacts, and the scientific study of Native American human remains. He expressed concern about the large amounts of money being used for scientific study and thought that money should be given to Native Americans. He stated he agreed with the people who gave testimony at the meeting, and added that he would like to receive a copy of the meeting minutes.

Mr. Frank Wozniak, NAGPRA Coordinator for the Southwestern Region of the US Forest Service, wanted to bring a difficult situation to the attention of the Review Committee members. There are prehistoric archaeological cultures in the Southwest where the Forest Service can establish cultural affiliation and have done so; however, the culturally affiliated Indian tribes do not reside within the boundaries of the United States of America.

Ms. Judy Wright, Puyallup Tribe of Indians, asked the Review Committee members for assistance for tribes dealing with museums that are reluctant to help identify sacred objects, funerary objects, and culturally unidentifiable human remains. She reported problems when museums consistently report inventories as “unknown,” and are unwilling to share information with tribes.

Closing Comments

Ms. Naranjo thanked the NAGPRA staff for their hard work. On behalf of the Secretary and the DOI, Mr. McManamon thanked the Review Committee members for their time and attention to the implementation of NAGPRA, the members of the NPS staff for their work at the meeting, the people providing the invocations and presentations for the meeting, and the audience for their attention and comments.

Mr. Steve Begay, Navajo Nation, gave the closing invocation. The meeting was adjourned at 12:00 p.m. on Saturday, June 27th, 1998.

Approved:

/S/ Tessie Naranjo
Tessie Naranjo, Chair
Native American Graves Protection
and Repatriation Committee

January 5, 1999
Date